

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation

MDL 1358 (SAS)

This Document Relates To:

City of Fresno v. Chevron U.S.A. Inc., et al.
04 Civ. 04973

**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT BASED ON THE STATUTE OF LIMITATIONS
OR, ALTERNATIVELY, FOR LACK OF INJURY**

PLEASE TAKE NOTICE that the Defendants listed below (collectively referred to as "Defendants") hereby move this Court, pursuant to the Federal Rule of Civil Procedure 56, for an Order granting summary judgment based on the statute of limitations in favor of Defendants as to plaintiff the City of Fresno's first, second, and fourth causes of action (strict liability, negligence, and nuisance) at the following sites:

- (1) Chevron #9-4374, 1160 Fresno Street;
- (2) Gilbert's Exxon, 4142 East Church;
- (3) Chevron #9-9093, 3996 N. Parkway Drive;
- (4) 7-Eleven #13917, 3645 Olive Avenue;
- (5) Tosco #39118, 1605 N. Cedar;
- (6) Tosco #30587, 1610 N. Palm;
- (7) Valley Gas, 2139 South Elm Street;
- (8) Beacon-Arco #615, 1625 Chestnut Avenue; and
- (9) Unocal #6353, 1418 E. Shaw.

This Motion is brought on the ground that the City's above-listed claims accrued prior to October 22, 2000 at these sites. Furthermore, by that time, the City knew or should have known sufficient facts regarding its claims to bar it from relying on the discovery rule as a basis to defer the running of the limitations period.

Alternatively, at the sites with no groundwater detections (sites 6-9), the City lacks injury as a matter of law, and therefore the claims should be dismissed.

This Motion is and will be based upon the Memorandum in support hereof and accompanying materials to be filed with the Court, this Notice and Motion, the pleadings and other documents on file in this action and other actions pending in the MDL, and such other argument and evidence as the Court may consider at any hearing of the Motion.

Date: February 1, 2013

Respectfully submitted,

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***Attorneys for Defendants
Chevron U.S.A. Inc. and Union Oil
Company of California¹***

¹ The Defendants on the following page have joined in filing Defendants' Motion for Summary Judgment based on the Statute of Limitations.

DEFENDANTS JOINING MOTION

CHEVRON U.S.A. INC.

UNION OIL COMPANY OF CALIFORNIA

EXXON MOBIL CORPORATION

SHELL OIL COMPANY

TEXACO REFINING AND MARKETING INC.

EQUILON ENTERPRISES LLC

EQUIVA SERVICES LLC

CITGO PETROLEUM CORPORATION

KERN OIL & REFINING CO.

NELLA OIL COMPANY

CONOCOPHILLIPS COMPANY, individually and as successor-in-interest to Defendant
TOSCO CORPORATION and Phillips Petroleum Company

LYONDELL CHEMICAL COMPANY, formerly known as "ARCO CHEMICAL COMPANY"

COASTAL CHEM, INC.

TESORO CORPORATION (F/K/A TESORO PETROLEUM CORPORATION)

TESORO REFINING and MARKETING COMPANY (ERRONEOUSLY NAMED AS
TESORO REFINING AND MARKETING COMPANY, INC.)

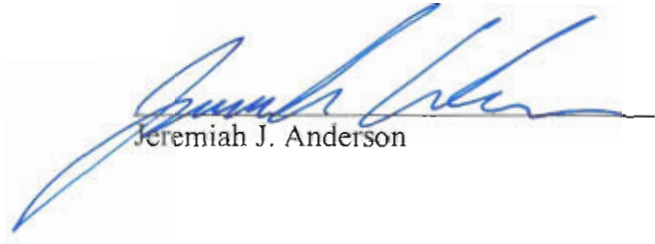
ULTRAMAR INC.

VALERO MARKETING AND SUPPLY COMPANY

VALERO REFINING COMPANY-CALIFORNIA

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2013 a true, correct, and exact copy of the foregoing document was served on all counsel via LexisNexis File & Serve.



Jeremiah J. Anderson